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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

EXAMINER

FISCHER, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,810

Applicant(s)

PENTTINEN, JUKKA *SW*

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

RESTRICTION

1. Applicant's election without traverse of Group II (claims 4-9) in Paper No. 5 is acknowledged.
2. Claims 1-3 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Specification

3. The disclosure is objected to because of the following informalities: The specification incorporates specific claims. Appropriate correction is required.

Drawings

4. The drawings are objected to under 37 C.F.R. §1.83(a). The drawings must show every feature of the invention specified in the claims. No new matter allowed. The following are examples of what must be shown or the features canceled from the claims:
 - i. The "supplier of good portions" as recited in claim 5.
 - ii. The "telecommunications" network" as recited in claim 8.
 - iii. The "system for controlling the user's nutritional level" as recited in claim 9.
5. The Examiner notes the claims are replete with the above drawing errors. All structural features recited in claims 4-9 are clearly not shown in the drawings. The Examiner highly

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recommends Applicant review all 6 claims to ensure that every structural feature claimed is shown in the drawings. To show no new matter is found in the drawings, the Examiner respectfully requests Applicants to explicitly show where in the specification Applicant has support or antecedent basis for any new drawings or drawing changes. Additionally, a proposed drawing correction or corrected drawings are required in reply to this Office action to avoid abandonment of the application.

Claim Rejections - 35 USC §112 1st Paragraph

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 6 is rejected under 35 U.S.C. §112, 1st paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In particular, it is not known how the “transfer mechanism” operates. If Applicant expressly states on the record that such features are old and well known in the art and provides appropriate evidence (e.g. a U.S. patent) to support his position, this particular 35 U.S.C. §112, 1st paragraph will be withdrawn.

Claim Rejections - 35 USC §112 2nd Paragraph

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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9. Claims s 5-9 are rejected under 35 U.S.C. §112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with errors. Some examples follow

- a. In claim 5, it is not known what is encompassed by "or equivalent."
- b. In claim 6, it is not known how the "transfer mechanism" operates since claim 4 requires the cold and hot units to be "integrated into a single assembly"
- c. In claim 8, it is unclear if Applicant intends to claim the subcombination (the apparatus only) or the combination (apparatus in combination with the telephone network). If Applicant intends to claim only subcombination, the body of the claim(s) must be amended to remove any positive recitation of the combination. If Applicant intends to claim the combination, the preamble of the claim must be amended to be consistent with the language in the body of the claim. The Examiner interprets claims 4 as directed to the subcombination.

10. The Examiner finds that because particular claims are rejected as being indefinite under 35 U.S.C. §112 2nd paragraph, it is impossible to properly construe claim scope of the indefinite claims at this time. See *Honeywell International Inc. v. ITC*, 68 USPQ2d 1023, 1030 (Fed. Cir. 2003) ("Because the claims are indefinite, the claims, by definition, cannot be construed.").

However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied as much as practically possible. Upon appropriate resolution of ~~the 35 U.S.C. §§ 101 and~~ 112 rejections, the claims will be reinterpreted to access claim scope and if not allowable, have the best prior art applied to the claims.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 4-9, as understood by the Examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Westbrook et. al. (U.S. 5,454,427) (“Westbrook”). Westbrook discloses a cold storage space (within 20) and a heating unit (47b) are integrated into a single assembly (Figure 7); which is arranged to be controlled by a control center (20); a user interface (the face of 20); and network (inherent within 40).

13. Claims 4-9, as understood by the Examiner, are also rejected under 35 U.S.C. 102(e) as being clearly anticipated by Sone (U.S. 6204763).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claims 4-9, as understood by the Examiner, are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Westbrooks in view of Chen et. al. (U.S. 5,553,609) ("Chen '609").¹ It is the Examiner's principle position that the claims are anticipated because of the inherencies noted above.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Westbrooks as taught by Chen '609 to include Chen '609's network. Such a modification would have enabled medical professionals to monitor the status of the food in the rack so that in the event of a fire caused by overheating, emergency help could quickly be attained.

16. With respect to the claims, the Examiner notes claim 4 begins "Apparatus" Additionally, "[c]laims in apparatus form conventionally fall into the 35 U.S.C. §101 statutory category of a 'machine.'" *Ex parte Donner*, 53 USPQ2d 1699, 1701 (B.P.A.I. 1999)(unpublished), (Paper No. 34, page 5, issued as U.S. Patent 5,999,907). Products may be either machines, manufactures, or compositions of matter. MPEP §2106 IV B. 2 (a). Therefore, it is the Examiner's position that Applicant(s)' apparatus claims are clearly "product" claims or more specifically, "machine" claims.

¹ See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

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17. Functional recitations beginning with the word “for” only (*i.e.* not ‘means for’)(*e.g.* “for the storage of food portions” as recited in claim 4) have been considered but are given little patentable weight² because they fail to add any structural limitations and are thereby regarded as intended use language. A recitation of the intended use of the claimed product must result in a structural difference between the claimed product and the prior art in order to patentably distinguish the claimed product from the prior art. If the prior art structure is capable of performing the intended use, then it reads on the claimed limitation. *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) (“The manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself.”); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). See also MPEP §§ 2114 and 2115. Unless expressly noted otherwise by the Examiner, the claim interpretation principles in this paragraph apply to all examined claims currently pending.

² See *e.g. In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight).

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18. After careful review of the specification, the Examiner is unaware of any desire—either expressly or implicitly—by Applicant to be his own lexicographer and to define a claim term to have a meaning other than its ordinary and accustomed meaning. Therefore, the Examiner starts with the heavy presumption that all claim limitations are given their ordinary and accustomed meaning. See *Bell Atlantic Network Services Inc. v. Covad Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir. 2001) (“[T]here is a heavy presumption in favor of the ordinary meaning of claim language as understood by one of ordinary skill in the art.”); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366, 62 USPQ2d 1658, 1662 (Fed. Cir. 2002) (There is a “heavy presumption that a claim term carries its ordinary and customary meaning.”). See also MPEP §2111.01 and *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).³

In accordance with the ordinary and accustomed meaning presumption and unless 35 U.S.C. §112 6th paragraph applies, during examination the claims are interpreted with their “broadest reasonable interpretation” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also MPEP §2111.

However, if Applicant disagrees with the Examiner and has either (a) already used lexicography or (b) wishes to use lexicography and therefore (under either (a) or (b)) desires a claim limitation to have a meaning other than its ordinary and accustomed meaning, the

³ It is the Examiner’s position that “plain meaning” and “ordinary and accustomed meaning” are synonymous. See e.g. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) (“[A]ll terms in a patent claim are to be given their plain, ordinary and accustomed meaning . . .”).

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Examiner respectfully requests Applicant in his next response to expressly indicate⁴ the claim limitation at issue and to show where in the specification or prosecution history the limitation is defined. Such definitions must be clearly stated in the specification or file history. *Bell Atlantic*, 262 F.3d at 1268, 59 USPQ2d at 1870, (“[I]n redefining the meaning of particular claim terms away from the ordinary meaning, the intrinsic evidence must ‘clearly set forth’ or ‘clearly redefine’ a claim term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term”).⁵ The Examiner cautions that no new matter is allowed. Applicant is reminded that failure by Applicant in his next response to properly traverse this issue in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered a desire by Applicant to forgo lexicography in this application and to continue having the claims interpreted with their broadest reasonable interpretation.⁶ Additionally, it is the

⁴ “Absent an *express intent* to impart a novel meaning, terms in a claim are to be given their ordinary and accustomed meaning. [Emphasis added.]” *Wenger Manufacturing Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1232, 57 USPQ2d 1679, 1684 (Fed. Cir. 2001) (citations and quotations omitted). “In the absence of an *express intent* to impart a novel meaning to claim terms, an inventor’s claim terms take on their ordinary meaning. We indulge a heavy presumption that a claim term carries its ordinary and customary meaning. [Emphasis added.]” *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002) (citations and quotations omitted).

⁵ See also *Vitronics Corp. v. Conceptiontronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996), (□[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, *as long as* the special definition of the term is *clearly stated* in the patent specification or file history. [Emphasis added.]); *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998) (“Such special meaning, however, must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.”). See also MPEP §2111.01, subsection titled “Applicant May Be Own Lexicographer” and MPEP §2173.05(a) titled “New Terminology.”

⁶ See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]”

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Examiner's position that the above requirements are reasonable.⁷ Unless expressly noted otherwise by the Examiner, the preceding discussion on claim interpretation principles applies to all examined claims currently pending.

19. To the extent that the Examiner's interpretations are in dispute with Applicant's interpretations, the Examiner hereby adopts the following definitions—under the broadest reasonable interpretation standard—in all his claim interpretations.⁸ Moreover, while the following list is provided in accordance with *In re Morris*, the definitions are a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language.⁹ Finally, the following list is not intended to be exhaustive in any way:

- d. **Data** “Plural of the Latin datum, meaning an item of information. In practice, data is often used for the singular as well as plural the form of the noun.” Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997.¹⁰

⁷ The Examiner's requirements on this matter are reasonable on at least two separate and independent grounds. First, the Examiner's requirements are simply an express request for clarification of how Applicants intend their claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicants is not inadvertently overlooked by the Examiner. Second, the requirements are reasonable in view of the USPTO's goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO's The 21st Century Strategic Plan, February 3, 2003 available at www.uspto.gov/web/offices/com/strat21/index.htm (last accessed February 7, 2004).

⁸ While most definitions are cited because these terms are found in the claims, the Examiner may have provided additional definitions to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

⁹ See e.g. *Brookhill-Wilk 1 LLC v. Intuitive Surgical Inc.*, 334 F.3d 1294, 1300, 67 USPQ2d 1132, 1137 (Fed. Cir. 2003) (abstract dictionary definitions are not alone determinative; “resort must always be made to the surrounding text of the claims in question”).

¹⁰ Based upon Applicants' disclosure, the art of record, and the knowledge of one of ordinary skill in this art as determined by the factors discussed in MPEP §2141.03 (where practical), the Examiner finds that the *Microsoft Press Computer Dictionary* is an appropriate technical

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e. **Internet** “The worldwide collection of networks and gateways that use the TCP/IP suite of protocols to communicate with one another. At the heart of the Internet is a backbone of high-speed data communication lines between major nodes or host computers, consisting of thousands of commercial, government, educational, and other computer systems, that route data and messages.” *Id.*

20. Although Applicant uses “means” in the claim(s) (*e.g.* claim 4 recites “means of a control centre”), it is the Examiner’s position that the “means” phrase(s) do not invoke 35 U.S.C. 112 6th paragraph because “means for” is not recited. See MPEP §2181. If however Applicant desires to invoke 35 U.S.C. 112 6th paragraph, the Examiner respectfully requests Applicant to amend the claim(s) to recite “means for” and expressly state on the record their desire to invoke 35 U.S.C. 112 6th paragraph. Upon amendment and upon receiving such express invocation of 35 U.S.C. 112 6th paragraph, the “means for” phrase(s) will be interpreted as set forth in the *Supplemental Examination Guidelines for Determining the Applicability of 35 USC 112 6th*.¹¹ Applicant is reminded that failure by Applicant in his next response to also address the 35 U.S.C. 112 6th paragraph issues in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered a desire by Applicant NOT to invoke 35 U.S.C. 112 6th

dictionary known to be used by one of ordinary skill in this art. See *e.g. Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used the *Microsoft Press Computer Dictionary* (3d ed.) as “a technical dictionary” to define the term “flag.” See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled ‘New Terminology.’

¹¹ Federal Register Vol 65, No 120, June 21, 2000.

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paragraph. Unless expressly noted otherwise by the Examiner, the preceding discussion on 35 U.S.C. 112 6th paragraph applies to all examined claims currently pending.

Conclusion

21. The following references are pertinent to Applicant's disclosure: Wang (U.S. 5,938,959); Huntsman (U.S. 5,801,689); Porter (U.S. 5,774,053); Namisniak et. al. (U.S. 5,711,160); Chen et al (U.S. 5,590,197); Liebermann (U.S. 5,404,935); Kretsch et. al. (U.S. 5,233,520); and Harris et. al. (U.S. 4,629,090).

22. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 200, 700, 1800, and 2100 are from the MPEP 8th Edition, Rev 1, February 2003. All remaining MPEP citations are from MPEP 8th Edition, August 2001.

23. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the references How Computers Work, 4th Ed. by Ron White; is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. The reference is cited in its entirety.

Moreover, because the reference is directed towards beginners, because of the reference's basic content (which is self-evident upon review of the references), and after further review of the entire application and all the art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that the reference is primarily directed towards those of low skill in this art. Because the reference is directed towards those of low skill

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in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within the reference.

24. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has provided Applicant with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions.

If Applicant disagrees with any factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,¹² the Examiner respectfully reminds Applicant to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in his next response. By addressing these issues now, matters where the Examiner and Applicant agree can be eliminated allowing the Examiner and Applicant to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicant has any questions regarding the Examiner's positions or has other questions regarding this communication or even previous communications, Applicant is strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. To respond to this Office Action by facsimile, fax to (703) 872-9306.

AJ Fischer 2/7/04

Andrew J. Fischer
Patent Examiner
Art Unit 3627

AJF
February 7, 2004

¹² E.g., if the Examiner rejected a claim under '103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.